

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION

MELIO VAZQUEZ

PLAINTIFF

V.

CIVIL ACTION NO.2:04CV354-WAP-JAD

DESOTO COUNTY JAIL, ET AL

DEFENDANTS

**REPORT AND RECOMMENDATION**

On October 6, 2005, plaintiff, a former inmate at the DeSoto County Jail, appeared before the court for a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985) to determine if there exists a justiciable basis for his claim filed pursuant to 42 U.S.C. §1983.

Vasquez complains that he was beaten by guards Pennington and Hambric while handcuffed. He has also named Sgt. Mitchell who was not present at the alleged beating. He complains that Sgt. Mitchell got up in his face and screamed at him. Unpleasant, antagonistic or even threatening words, without more, do not amount to a constitutional violation. *McFadden v Lucas*, 713 F. 2d 143, 146(5th Cir. 1983). Neither Mitchell or the DeSoto County Jail have any personal involvement with the attack on Vasquez. Neither are subject to vicarious liability for the alleged acts of Pennington and Hambric. *Monell v. Department of Social Services*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 611(1978).

Therefore, the undersigned recommends that the case be dismissed with prejudice as to Sgt. Mitchell and the DeSoto County Jail. Process has been issued for defendants Pennington and Hambric.

The parties are referred to 28 U.S.C. 636(b)(1) and Local Rule 72.2(D) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections are required to be in writing and must be filed within ten days of this date. Failure to file

written objections to the proposed finding and recommendations contained in this report within ten days from the date of filing will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions accepted by the district court *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Plaintiff is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within ten days of this date. Plaintiff is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 11th day of October, 2005.

/s/ JERRY A. DAVIS  
UNITED STATES MAGISTRATE JUDGE